

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORUCH LOWENBEIN on behalf of
himself and all others similarly situated,

Plaintiff,

v.

COLLECTCORP CORPORATION,

Defendant.

Civil Action No. 1:11-cv-01141-JBW-RLM

**DEFENDANT COLLECTCORP CORPORATION'S
ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES defendant, Collectcorp Corporation (“Collectcorp”), by and through undersigned counsel, and for its Answer to Plaintiff’s Complaint, states as follows:

INTRODUCTION

1. Collectcorp admits that plaintiff purports to bring an action for actual and statutory damages under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, but denies any and all damages, liability, and/or violations, to the extent alleged in ¶ 1.

PARTIES

2. Collectcorp denies the allegations in ¶ 2 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

3. Collectcorp denies the allegations in ¶ 3 as calling for a legal conclusion.

4. Collectcorp admits the allegations in ¶ 4.

5. Collectcorp admits only that that as part of its business it provides debt collection services to third party clients. Except as specifically admitted, Collectcorp denies the allegations in ¶ 5.

6. Collectcorp admits only that when it operates as a debt collector as defined by 15 U.S.C. § 1692(a)(6), certain of its activities may be regulated by the FDCPA. Except as specifically admitted, Collectcorp denies the allegations in ¶ 6.

JURISDICTION AND VENUE

7. Collectcorp admits the allegations in ¶ 7 for jurisdiction purposes only.

8. Collectcorp admits the allegations in ¶ 8 for venue purposes only.

ALLEGATIONS PARTICULAR TO ORUCH LOWENBEIN

9. Collectcorp admits only that it was retained to provide debt collection services for a debt owed by plaintiff and that it undertook collection of said debt. Except as specifically admitted, the allegations in ¶ 9 are denied.

10. Collectcorp admits only that its records reflect that on May 13, 2010, it called plaintiff. Except as specifically admitted, the allegations in ¶ 10 are denied.

11. Collectcorp admits the allegations in ¶ 11 upon information and belief.

12. Collectcorp admits only that plaintiff has in his possession a recording that he purports to be a voice mail message from May 13, 2010.

13. Collectcorp denies the allegations in ¶ 13.

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.

14. Collectcorp repeats and reiterates its answer to the allegations in ¶¶ 1 through 13 as if same were set forth herein at length.

15. Collectcorp admits plaintiff purports to bring this action as a class action, but denies it meets the requirements of Fed. R. Civ. P. 23.

16. Collectcorp denies the allegations in ¶ 16.

17. Collectcorp denies the allegations in ¶ 17.

18. Collectcorp denies the allegations in ¶ 18, including its subparts (A) through (E).

19. Collectcorp denies the allegations in ¶ 19.

20. Collectcorp denies class certification is appropriate.

21. Collectcorp denies the allegations in ¶ 21 as calling for a legal conclusion.

Violations of the Fair Debt Collection Practices Act

22. Collectcorp denies the allegations in ¶ 22.

23. Collectcorp denies the allegations in ¶ 23.

24. Collectcorp denies that plaintiff is entitled to the relief requested in the final paragraph of his Complaint, which begins “WHEREFORE.”

AND NOW, in further Answer to the Complaint, Defendant Collectcorp Corporation avers as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Collectcorp upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Pursuant to 15 U.S.C. § 1692k(c), to the extent a violation(s) is established and in the event Collectcorp is found to be a debt collector as defined in the FDCPA, which is specifically denied, any such violation(s) was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

THIRD AFFIRMATIVE DEFENSE

Assuming plaintiff suffered any damages, plaintiff has failed to mitigate his damages or take other reasonable steps to avoid or reduce his damages.

FOURTH AFFIRMATIVE DEFENSE

Any harm suffered by plaintiff was legally and proximately caused by persons, individuals, corporations, or entities beyond the control or supervision of Collectcorp, or for whom Collectcorp is not responsible or liable.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff fails in whole or in part to satisfy the requirements for a class action.

SIXTH AFFIRMATIVE DEFENSE

This action should not be maintained as a class action because individual questions predominate over common questions of law and fact, and a class action is not superior to other available methods for the fair and efficient adjudication of the matter.

SEVENTH AFFIRMATIVE DEFENSE

One or more of the Counts contained in the Complaint are barred by the applicable statute of limitations.

WHEREFORE, Defendant Collectcorp Corporation requests the Court dismiss this action with prejudice and grant it all further and necessary relief the Court deems appropriate.

Dated: April 8, 2011

Respectfully submitted,

/s/ Aaron R. Easley
Aaron R. Easley (ae9922)
SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.C.
200 Route 31 North, Suite 203
Flemington, NJ 08822
Telephone No.: (908) 751-5940
Facsimile No.: (908) 751-5944
aeasley@sessions-law.biz
Attorneys for Defendant
Collectcorp Corporation

CERTIFICATE OF SERVICE

I certify that on this 8th day of April 2011, a copy of **Collectcorp Corporation's Answer and Affirmative Defenses** was filed electronically in the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system, including plaintiff's counsel as described below. Parties may access this filing through the Court's system.

Adam J. Fishbein, Esq. (AF-9508)
483 Chestnut Street
Cedarhurst, NY 11516
Tel.: (516) 791-4400
Fax.: (516) 791-4411
fishbeinadamj@gmail.com
Attorney for Plaintiff

By: /s/ Aaron R. Easley
Aaron R. Easley, Esq.
Attorney for Defendant
Collectcorp Corporation